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[FILED APRIL 27, 1993]

STATE OF MICHIGAN

IN THE CIRCUIT COURT
FOR THE COUNTY OF MACOMB

RONALD D. KRESS and
KRESS & COMPANY,

Plaintiff,

v

Case No:
93-1144 CK

PROFILE MFG., INC., a Michigan corporation, and JOHN F. GALL, JAMES R. GALL, DONALD G. BLONDEAU, individuals, jointly and severally,

Hon.
Mary Chrzanowski

Defendants.

DRIGGERS, SCHULTZ, HERBST & PATERSON
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Attorneys for Plaintiff
2600 W. Big Beaver Rd., Ste. 550
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Robert C. Zack (P22676)
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27777 Franklin Road
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and

Owen E. Perry (P18812)
Attorneys for Defendants
201 W. Big Beaver, Ste. 400
P.O. Box 4390
Troy, Michigan 48099-4390

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

At a session of the Court held in the Courthouse, City of Mt. Clemens, County of Macomb, State of Michigan on April 27, 1993.

PRESENT: HON. /s/ MARY A. CHRZANOWSKI
CIRCUIT COURT JUDGE

Defendants having filed a Motion for Summary Disposition and a Brief in Support of the Motion, and Plaintiffs having filed a Brief in Opposition to the Motion, the parties having presented oral argument, and the Court being otherwise further advised in the premises;

IT IS HEREBY ORDERED AND ADJUDGED that Defendants' Motion for Summary Disposition is hereby denied, and the Court finds that Defendants have engaged in forum shopping.

IT IS FURTHER ORDERED that Plaintiffs' request for costs is hereby denied.

/s/ GEORGE C. STEEH
CIRCUIT COURT JUDGE

IN THE ABSENCE OF
MARY A. CHRZANOWSKI

A TRUE COPY
County Clerk

BY _____
Deputy Clerk

[FILED APRIL 28, 1993

STATE OF MICHIGAN

IN THE CIRCUIT COURT
FOR THE COUNTY OF MACOMB

RONALD D. KRESS and
KRESS & COMPANY,

Plaintiff,

v

Case No:
93-1144 CK

PROFILE MFG., INC., a Michigan corporation, and JOHN F. GALL, JAMES R. GALL, DONALD G. BLONDEAU, individuals, jointly and severally,

Hon.
Mary Chrzanowski

Defendants.

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By: Richard B. Tomlinson (P27604)
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2600 W. Big Beaver Rd., Ste. 550
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(313) 355-5000

and

Owen E. Perry (P18812)
Attorneys for Defendants
201 W. Big Beaver, Ste. 400
P.O. Box 4390
Troy, Michigan 48099-4390

ORDER DENYING DEFENDANTS' MOTION FOR STAY OF PROCEEDINGS

At a session of the Court held in the Courthouse, City of Mt. Clemens, County of Macomb, State of Michigan on April 28, 1993.

PRESENT: HON. /s/ MARY A. CHRZANOWSKI
CIRCUIT COURT JUDGE

Defendants having filed a Motion for Stay of Proceedings Pending Interlocutory Appeal to the Court of Appeals, and Plaintiffs having filed a Response to said Motion, and the Court having heard oral arguments from both parties, and being otherwise further advised in the premises;

NOW THEREFORE, IT IS HEREBY ORDERED that Defendants' Motion is hereby denied for the reasons set forth in the record.

IT IS FURTHER ORDERED that Plaintiffs' request for costs incurred in connection with the Motion is taken under advisement, and shall be referred to Judge Chrzanowski, the assigned Judge in this case.

/s/ GEORGE C. STEEH
CIRCUIT COURT JUDGE

IN THE ABSENCE OF
MARY A. CHRZANOWSKI

A TRUE COPY
County Clerk

BY _____
Deputy Clerk

Approved as to form

/s/ ROBERT C. ZACK (P22676)
Attorneys for Defendants

/s/ RICHARD B. TOMLINSON (P27604)
Attorneys for Plaintiffs

Court of Appeals, State of Michigan

ORDER

Ronald Kress v Profile Mfg, Inc.

Docket #164667

L. C. #93-1144-CK

Richard Allen Griffin
Presiding Judge

Barbara B. MacKenzie
Gary R. McDonald
Judges

The Court orders that the application for leave to appeal is DENIED for failure to persuade the Court of the need for immediate appellate review.

A true copy entered and certified by Ella Williams, Chief Clerk, on

August 4, 1993
Date

/s/ ELLA WILLIAMS
Chief Clerk

Court of Appeals, State of Michigan

ORDER

Ronald D Kress v Profile Mfg Inc

Docket #164667

L. C. #93-1144-CK

Richard Allen Griffin
Presiding Judge

Barbara B. MacKenzie
Gary R. McDonald
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The Court hereby orders that the motion for rehearing is DENIED.

A true copy entered and certified by Ella Williams, Chief Clerk, on

September 23, 1993
Date

/s/ Ella Williams
Chief Clerk

ORDER

Michigan Supreme Court
Lansing, Michigan

Entered:
January 25, 1994

Michael F. Cavanagh
Chief Justice

Charles L. Levin
James H. Brickley
Patricia J. Boyle
Dorothy Comstock Riley
Robert P. Griffin
Conrad L. Mallett, Jr.
Associate Justices

97870 & (12)

RONALD D. KRESS and KRESS & COMPANY,

Plaintiffs-Appellees,

v.

PROFILE MFG., INC., and JOHN F. GALL, JAMES R. GALL, and DONALD G. BLONDEAU, individuals, jointly and severally,

Defendants-Appellants.

SC: 97870
COA: 164667
LC: 93 1144 CK

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the question presented should now be reviewed by this Court.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

January 25, 1994

/s/ CORBIN R. DAVIS
Clerk

CONSTITUTIONAL PROVISIONS

Patent Clause
U.S. Const., Art. I, §8, cl. 8

Clause 8. Patents and Copyrights

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

Supremacy Clause
U.S. Const., Art. VI, cl. 2

Clause 2. Supreme Law of Land

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

STATUTES INVOLVED

28 U.S.C. § 1257

§ 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

(As amended July 29, 1970, Pub.L. 91-358, Title I, § 172(a)(1), 84 Stat. 590; June 27, 1988, Pub.L. 100-352, § 3, 102 Stat. 662.)

28 U.S.C. § 2104

§ 2104. Reviews of State court decisions

A review by the Supreme Court of a judgment or decree of a State court shall be conducted in the same manner and under the same regulations, and shall have the same effect, as if the judgment or decree reviewed had been rendered in a court of the United States.

(As amended June 27, 1988, Pub.L. 100-352, § 5(d)(1), 102 Stat. 663.)

28 U.S.C. § 1338

§ 1338. Patents, plant variety protection, copyrights, mask works, trade-marks, and unfair competition

(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trade-marks. Such jurisdiction shall be exclusive of the courts of the states in patent, plant variety protection and copyright cases.

(b) The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent, plant variety protection or trademark laws.

(c) Subsections (a) and (b) apply to exclusive rights in mask works under chapter 9 of title 17 to the same extent as such subsections apply to copyrights.

(As amended Dec. 24, 1970, Pub.L. 91-577, Title III, § 143(b), 84 Stat. 1559; Nov. 19, 1988, Pub.L. 100-702, Title X, § 1020(a)(4), 102 Stat. 4671.)